82-5744

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO. 82-

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SUPREME COURT, U.S.

DOUGLAS R. MEEKS,

Petitioner,

v.

FLORIDA
~~LOUIS L. WAINWRIGHT,~~

Respondent.

PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF FLORIDA

JUNE RICE
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ATTORNEYS FOR PETITIONER

QUESTIONS PRESENTED

I. Whether the Court below disregarded petitioner's Eighth and Fourteenth Amendment rights in refusing, as a matter of law, to allow petitioner, a black man, to present evidence that racial attitudes are the most significant variables in determining which factually-similar Florida homicide cases result in death sentences and which do not, and that this racial determiner operates most strongly to the jeopardy of a black defendant, who, like petitioner, is accused of killing a white person; and that such racial prejudice had a determining role in petitioner's specific sentence, which involved a homicide during near race-riot conditions in a small community where past and present practices by both private and government agencies are documentably fraught with racial prejudice, hatred and violence against members of petitioner's race?

II. Whether the court below erred in refusing to hold that one or more of the following errors at trial were so fundamental in nature as to require, under the Sixth, Eighth and Fourteenth Amendment requirements of regularity in death penalty procedures, a retrial as to guilt and/or sentence:

(A) at the sentencing phase of the trial, the jury was instructed that consideration of mitigating circumstances "shall be" those enumerated in the Florida Statute;

(B) at the sentencing phase of the trial, the jury was not instructed that the State had the burden of proving aggravating circumstances beyond a reasonable doubt, although the Florida Supreme Court had previously held this to be an essential feature of the Florida Statute;

(C) at the sentencing phase of trial the judge relied upon self-incriminating statements made to court-appointed psychiatrists who were examining petitioner only for sanity/competency to stand trial, and without notice to

either petitioner or his counsel that the reports would be otherwise used;

(D) at the sentencing phase of the trial, the jury was informed by the prosecutor, and the judge expressly determined, that the underlying felony of robbery could be considered as more than one "aggravating circumstance"; the state supreme court subsequently ruled otherwise in a case to which petitioner was not a party? See Provence v. State, 377 So.2d 703 (Fla. 1976).

III. Whether the court below erred in determining that the assistance given petitioner by counsel at the conviction, sentencing or appeal stage of his case met the minimum standards of the Sixth and Fourteenth Amendments?

IV. Whether the court below erred in implicitly ruling that petitioner was afforded an adequate hearing on his claim of ineffective assistance of counsel, where the trial court

(A) denied petitioner funds to subpoena witnesses necessary to presentation of his case;

(B) denied petitioner funds with which to depose trial counsel;

(C) refused to admit any evidence that racial prejudice worked to petitioner's disadvantage at trial and in sentencing;

(D) refused to allow petitioner funds with which he could obtain a copy of the transcript of the trial of the co-felon who received a life sentence, which transcripts

(1) would provide information about the community knowledge toward the offense and toward the accused, relating to whether petitioner was judged by a fair and impartial jury; and

(2) would serve as a comparison of voir dire examinations conducted by petitioner's counsel and another attorney under similar community and trial conditions, relating to whether petitioner received constitutionally-adequate representation?

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

No. 82-

DOUGLAS R. MEEKS,

Petitioner,

-v-

LOUIE L. WAINWRIGHT,

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF FLORIDA

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Florida (No. 59,958, June 17, 1982) is not yet reported. It is set out in Appendix A, infra.

JURISDICTION

The judgment of the Florida Supreme Court sought to be reviewed was entered on June 17, 1982, rehearing denied September 13, 1982. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3), petitioner having asserted below and asserting here deprivation of rights secured by the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

2. This case also involves Florida Statute §921.141, set out in Appendix D.

STATEMENT OF THE CASE

Petitioner Douglas R. Meeks has been sentenced to die for first degree murder. The Supreme Court of Florida affirmed the judgment of the trial court, Meeks v. State, 339 So.2d 186 (Fla. 1976), then remanded the case to the trial court for a hearing pursuant to Gardner v. Florida, 430 U.S. 349 (1977). Petitioner was resentenced to death by the same trial judge, and the Supreme Court of Florida affirmed, Meeks v. State, 364 So.2d 461 (Fla.1978). A death warrant was signed authorizing petitioner's execution on February 13, 1980, and in a post-conviction proceeding was stayed by order of the Supreme Court of Florida issued February 11, 1980. On March 20, 1980, that court remanded the cause for an evidentiary hearing on the question of effectiveness of counsel in the original trial and appeal, Meeks v. Florida, 382 So.2d 673 (1980), and on June 17, 1982, affirmed the denial of relief made by the original trial judge. A new death warrant was then signed by the governor, with the execution set for November 16, 1982.

The facts of the underlying conviction are that on November 12, 1974, petitioner was arrested and, together with Homer Hardwick, charged with the robbery of a convenience store and murder of a white customer therein. The crime occurred in Perry, Florida during a period when the city had been under curfew due to racial violence.

With counsel present, two court-appointed psychiatrists subsequently examined petitioner, a man of "below normal intelligence", for sanity and competency to stand trial. According to their reports, the defendant incriminated himself, was sane at the time of the crime, and was competent to stand trial. The psychiatrists account of petitioner's incriminating statements was submitted to the trial judge and expressly relied upon by him in sentencing petitioner to death. (See P. 3 of "Written Findings Upon Which Sentence of Death is Based," attached hereto as Appendix E.)

At trial, defense counsel conducted an extremely abbreviated voir dire examination of the prospective jurors, during which 11 of 12 seated to decide the verdict and recommend sentence stated that they had heard about the case prior to the court proceeding. The defense rested without calling any witnesses and the jury returned a verdict of guilty on all charges at 4:52 p.m. At 5:05 p.m. the sentencing phase began. Defense counsel called one witness, the criminal activities clerk for the Sheriff's office, who testified only that she had no record of outstanding charges against the petitioner in other counties. On cross examination, however, the prosecutor was allowed to elicit testimony as to a pending murder charge in Taylor County. After argument by counsel and instructions by the judge, the jury retired at 5:40 p.m. Twenty-three minutes later, the jury returned with a recommendation that the penalty imposed be death. The court immediately imposed a sentence of death on the murder charge, life on the robbery charge, fifteen years on the assault charge, to run consecutively to the life sentence, and fifteen years on the firearms charge to run consecutively to the fifteen year sentence for assault.

The evidence introduced at petitioner's trial included the following: two young men entered the Junior Food Store in Perry, Florida at approximately 8:00 p.m. on November 6, 1979. Dianne Allen, an employee of the store, was standing by the cash register talking with Lloyd Walker, a teenage customer. No one else was in the store. One young man, identified as petitioner's accused co-felon, Homer Hardwick, grabbed Walker around the neck. The other young man, identified as petitioner, held a gun and requested money from Ms. Allen. Then the four walked into a room in the back of the store where Walker and Allen were instructed to lie on the floor. Allen testified that next "they started shooting". Allen was shot in the shoulder, Walker in the head. Allen subsequently called the police by telephone; Walker died six days later.

On April 14-16, 1975, petitioner's accused co-felon Hardwick, a larger, smarter man who had been raised in Perry, was

tried, convicted and sentenced to life imprisonment.

In March, 1975, petitioner was convicted of a separate murder at a convenience store in the same town seven days prior to the murder in the case here presented for review. He was given a still more abbreviated defense by the same trial counsel and, the jury having been told he was already under a separate sentence of death, he was again sentenced to die. The issues in the latter trial are in many respects identical to, and will be controlled by, those here presented for review.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW.

Petitioner's request, made under the Eighth and Fourteenth Amendments, that he be allowed to present evidence that imposition of the death penalty in Florida, and imposition of his specific sentence of death at the time it was rendered in Perry, Florida, are products of racial determiners, was pleaded in ¶14(d) of his motion for post-conviction relief under Fla. R. Crim. P. §3.850, attached hereto as Appendix C. The trial court's initial rejection of the request was affirmed by the Florida Supreme Court in Meeks v. Florida, 382 So.2d 673 (Fla. 1980), attached hereto as Appendix B, in which each member of the court joined one of three separate opinions addressing the question, and which remanded the cause for an evidentiary hearing on the effectiveness of trial counsel. At that hearing, petitioner requested the right to present evidence that his specific death sentence was determined by racial bias evident in state-wide sentencing patterns and evident specifically in Perry, Florida, at the time of the crime charged and at the time of trial, such that the perfunctory voir dire examination of prospective jurors by trial counsel was vastly inadequate to eliminate that prejudice. The trial court's refusal to admit evidence on this issue was appealed (see "Statement of Judicial Acts to be Reviewed," attached hereto in Appendix C), and was affirmed by the Florida Supreme Court in Meeks v. State (No. 59, 958, June 17, 1982, rehearing denied September 13, 1982 , attached in Appendix A).

Petitioner's claim that certain errors at trial and sentencing were so fundamental in nature as to require retrial under constitutional requirements of regularity in death penalty procedures was pleaded in ¶14(F) of his motion for post-conviction relief under Fla. R. Crim. P. §3.850, attached hereto as Appendix C, and in "Ground Six" of his supplement to motion for post-conviction relief, attached hereto in Appendix C; and was rejected by both the trial court and the Supreme Court of Florida (Appendix A).

Petitioner's claim that his assistance by counsel did not meet the standards of the Sixth and Fourteenth Amendments was pleaded in ¶14(A) of his motion for post-conviction relief under Fla. R. Crim. P. §3.850, attached hereto as Appendix C, and at the abbreviated evidentiary hearing held thereafter. The trial court's denial of relief was affirmed by the Florida Supreme Court by opinion attached as Appendix A.

The trial judge's denial, at the post-conviction evidentiary hearing, of petitioner's request for funds to subpoena witnesses, to depose trial counsel, and to reproduce essential documents, was affirmed by the Florida Supreme Court by judgment attached hereto as Appendix A. (See also "Statement of Judicial Acts to be Reviewed", attached hereto in Appendix C.)

REASONS FOR GRANTING THE WRIT

This petition asks:

1) whether state courts may entirely refuse to hear evidence that a death penalty statute as applied is guided by racial animus either generally or in the specific case at bar;

2) whether certain trial errors are so fundamental to the application of a state death penalty statute that retrial as to guilt and/or sentence is made necessary by the standards of the Sixth, Eighth, and Fourteenth Amendments.

3) what constitutes the minimal contribution counsel can make to his client's defense without infringing the standards of the Sixth and Fourteenth Amendments; and

4) whether an indigent state prisoner is entitled to funds to subpoena essential witnesses, to depose trial counsel, and to produce essential documents at an evidentiary hearing on the adequacy of that counsel's representation?

I

THE COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER THE COURT BELOW ERRED IN REFUSING AS A MATTER OF LAW TO ALLOW PETITIONER, A BLACK MAN, TO PRESENT EVIDENCE (1) THAT RACIAL ATTITUDES ARE THE MOST SIGNIFICANT DETERMINER IN SELECTING WHICH FACTUALLY-SIMILAR HOMICIDE CASES RESULT IN DEATH SENTENCES, AND THAT THIS RACIAL DETERMINER OPERATES MOST STRONGLY TO THE JEOPARDY OF A BLACK DEFENDANT WHO, LIKE PETITIONER, STANDS ACCUSED OF KILLING A WHITE PERSON; AND (2) THAT RACIAL PREJUDICE WAS A DETERMINER OF PETITIONER'S SPECIFIC SENTENCE WHICH INVOLVED A HOMICIDE DURING NEAR RACE-RIOT CONDITIONS IN A COMMUNITY WHERE PAST AND PRESENT PRACTICES ARE DOCUMENTABLY GUIDED BY RACIAL ANIMUS.

In his dissenting opinion in Furman v. Georgia, Mr. Justice Powell stated:

> "Although not presented by any of the petitioners today, a different argument, premised on the Equal Protection Clause, might well be made. If a Negro defendant, for instance, could demonstrate that members of his race were being singled out for more severe punishment than others charged with the same offense, a constitutional violation might be established."

In support of his proposition, Mr. Justice Powell cited an earlier opinion authored by Mr. Justice Blackmun, another Furman dissenter, during his tenure on the U.S. Court of Appeals for the Eighth Circuit.

Petitioner's contention is precisely the claim contemplated by Justice Powell and Justice Blackmun. Yet the lower court has refused even to receive evidence on the point. Petitioner has had no benefit of judicial process through which he may present his claim, and no adversary proceeding in which he may detail and define its legal significance.

Petitioner can show through competent evidence that when the facts of the cases are held neutral, he, a black person accused of killing a white person, was more than five times more likely to receive the penalty of death than a similarly-situated white defendant. This comparison focuses on the race of the defendant, rather than that of the victim, which is held constant. If the race of the victim is also considered, petitioner can show that his jeopardy of receiving a death penalty is overwhelmingly higher than a white person accused of murdering a black person: no such offender has ever been executed in Florida, and only three are on death row today. Petitioner, through competent evidence, can

show that when all legally-cognizable factual differences in Florida homicide cases are equalized, race is the single most significant determiner of death penalty imposition.

Additionally, petitioner has claimed the right to show that his specific sentence was the product of racial fear and animus existing at the specific time and in the particular community where the crime, arrest and trial occurred. Again, the lower court has refused to allow the introduction of evidence in support of the claim.

Petitioner can produce overwhelming evidence that Taylor County, Florida and the city of Perry, Florida have a long and documented history of racial hatred, discrimination and violence against black people perpetrated by both private and governmental agencies. He can establish that at the time of his arrest and of the crime charged, racial violence stemming from the shotgun-killing of a black man seeking service at a bar open to all white persons had led to the emergency closing of the local high school, and to imposition of a municipal curfew. Petitioner can also show that affidavits signed by citizens of Perry, Florida and filed on the co-felon's behalf by his counsel, aver that there was a "strong undercurrent of racial unrest in Taylor County" at the time of petitioner's trial, evidenced by "near-riot" conditions and "racial friction" that would prevent a fair and impartial trial. He can show that the voir dire examination of prospective jurors by trial counsel was entirely inadequate to protect his right to an impartial jury.

The lower court has refused to allow petitioner to present competent evidence showing that the death sentence imposed upon him is unconstitutional under two independent lines of decisions by the United States Supreme Court. First, the common denominator of the majority opinions in Furman is that the death penalty must not be "capriciously" imposed (92S.Ct. at 2762, opinion of Stewart, J., concurring). A death penalty whose imposition is guided by racial considerations is, of course, legally capricious.

Second, a long line of United States Supreme Court rulings has established that race is the most constitutionally suspect of all factors which may guide the law, especially when the result

works to the disadvantage of black people, toward whose plight the civil war amendments were addressed. Judicial scrutiny under the Equal Protection Clause is at its most demanding

> ". . . in the area of the law in which the Framers obviously meant it to apply -- classifications based on race or on national origin, the first cousin of race . . . " (Trimble v. Gordon, 430 U.S. 762, 777 (1977) opinion of Rehnquist, J., dissenting.)

Since 1886, this Court has consistently enjoined the execution of laws which, though neutral on their face, have been applied in a racially discriminatory pattern. See, e.g., Yick Wo. v. Hopkins, 118 U.S. 356. The Court has affirmed that the application of "a law neutral on its face and serving ends otherwise within the power of government" may nonetheless be enjoined where the pattern of application shows a "purpose" to discriminate by race, Washington v. Davis, 426 U.S. 229, 242 (1976), and importantly, the Court has consistently ruled that such a purpose need not be established through direct evidence of the state actor's subjective intent. Rather, actionable "purpose" can be demonstrated inferentially through data, and relief can be granted even if the disparate imposition of the law was caused by ignorance or unconscious racial bias rather than by a subjective, conscious design to disadvantage black people. In Rose v. Mitchell, 99 S.Ct. 2993 (1979), Mr. Justice Blackmun spoke for four other Justices in observing that

> " . . . we also cannot deny that, 114 years after the close of the War Between the States and nearly 100 years after Strauder, racial and other forms of discrimination still remain a fact of life, in the administration of justice as in our society as a whole. Perhaps today that discrimination takes a form more subtle than before. But it is not less real or pernicious."

A grant of the writ of certiorari in petitioner's case could clarify the responsibilities of state courts to hear evidence of racial discrimination in their death penalty processes.

II.

THE COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER THE COURT BELOW ERRED IN FAILING TO HOLD THAT CERTAIN INTERPRETATIONS OF THE FLORIDA DEATH PENALTY STATUTE MUST BE APPLIED TO ALL WHO WOULD BE EXECUTED IN THE STATE.

In its early opinions construing Florida's new post-Furman death penalty statute, the Florida Supreme Court has held that

> 1) statutory "aggravating circumstances" must be proven "beyond a reasonable doubt" before the jury which recommends the penalty or the judge who imposes it, are to consider them, State v. Dixon, 283 So.2d 1 (1973);
>
> 2) During the sentencing phase of a capital trial, the advisory jury is not to be informed that the defendant has another murder charge pending atainst him, Elledge v. State, 346 So.2d 998 (1977);
>
> 3) in a case of felony murder, an underlying felony of robbery must be considered as only one "aggravating circumstance", rather than two or more, Provence v. State, 377 So. 2d 703 (Fla. 1976);

and the United States Supreme Court has ruled that

> 4) consideration of "mitigating circumstances" at sentencing may not be limited by a closed statutory list, Lockett v. Ohio, 438 U.S. 586 (1978); and
>
> 5) defendants are entitled to full warning of the use against them at sentencing of psychiatric examinations taken to determine competency to stand trial. Estelle v. Smith, 101 S.Ct. 1866 (1981).

In petitioner's case, (1) the sentencing jury was not informed of the state's burden in proving aggravating circumstances beyond a reasonable doubt, and there is no indication of record that the sentencing judge knew of the burden; (2) the sentencing jury was informed of a separate murder charge pending against petitioner; (3) the sentencing jury was informed by the prosecutor, and the sentencing judge expressly determined, that the underlying felony of robbery could be considered as more than one aggravating circumstance; (4) the sentencing jury was informed that mitigating circumstances "shall be limited" to those enumerated in the statute; and (5) in imposing sentence, the trial judge expressly relied upon incriminating statements made by petitioner to psychiatrists examining him for competency to stand trial.

Manifestly, any one of these errors could have determined the ultimate imposition of the death penalty -- especially where, as in Florida, the recommendation of the advisory jury is determined by bare majority vote.

The statutory requirement of proving aggravating circumstances "beyond a reasonable doubt" had been explained by the Florida Supreme Court prior to petitioner's sentencing trial. The other sentencing errors noted above have been held to constitute reversible error in subsequent cases to which petitioner was not a party. Outcome-determinative requirements such as these should be applied to all persons sentenced to death in Florida, in view of the federal constitutional requirement, enunciated in Furman v. Georgia, Proffitt v. Florida and Godfrey v. Georgia, that the death penalty must be applied through procedures which are regular and even-handed in their application. This result also seems compelled by the decisions of this Court governing the retroactive application of constitutional rulings, for the errors lie at the heart of the fact-finding process upon which the decision whether to execute is based. Cf. Linkletter v. Walker, 381 U.S. 618 (1965).

III.

THE COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER THE COURT BELOW ERRED IN RULING THAT THE ASSISTANCE OF COUNSEL RECEIVED BY PETITIONER WAS ADEQUATE UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

The standard by which the Supreme Court of Florida judges the effectiveness of counsel, set out in Knight v. State, 394 So.2d 997 (1981), differs in substantive measure from that announced by the United States Court of Appeals for the Eleventh Circuit in Washington v. Strickland, F.2d____ , (4/23/82) / rehearing en banc granted. Through petitioner's cause this Court could resolve the conflict between a state court of last resort and a federal court of appeals. And petitioner's cause presents an opportunity to lend meaning to that guarantee, through its application to a case where

(A) at the conviction stage of the bifurcated trial, counsel

(1) failed to request a change of venue upon ascertaining that all but one of the prospective jurors had prior information regarding the case and that there was strong racial prejudice prevalent and readily apparent in Perry, Florida, which would work to petitioner's extreme disadvantage;

(2) failed to conduct a reasonably effective voir dire

examination regarding proble juror preconceptions noted in Paragraph (1) above;

(3) failed to depose the witnesses introduced at trial rather than examine them for the first time in the presence of the jury;

(4) failed to adequately investigate the case (counsel evidently spent a total of only four to seven hours in "investigation" plus three hours meeting with petitioner);

(5) failed to protect petitioner from instructions, given to the jury by the court, which went beyond the evidence introduced at trial and which provided grounds for improper inference on petitioner's failure to testify;

(6) failed to protect petitioner from improper introduction of fingerprint evidence of an accused co-felon tried separately (suppressed at the co-felon's <u>own</u> trial);

(7) failed to argue that the jury should consider the lesser included offense of second degree murder, especially in light of petitioner's psychological history and grossly diminished mental capacity; and

(B) at the sentencing stage of the bifurcated trial, counsel

(1) admitted on the record that he was wholly unprepared for the sentencing phase of the bifurcated trial;

(2) neither contacted the petitioner's family nor otherwise attempted to offer evidence of petitioner's substantial psychological disability and near-retarded intelligence, including his susceptibility to being led by the larger, smarter co-felon, who received a life sentence;

(3) offered, as petitioner's only witness and only evidence at the sentencing phase of trial, the clerk of court, who through counsel's blunder, testified that petitioner had another pending murder charge in the same county;

(4) failed to protect petitioner from improper and misleading argument by the prosecutor at the sentencing phase of the trial, including statements that

(a) the jury should not consider the fact that the petitioner had no significant history of criminal activity as a mitigating circumstance;

(b) a "life sentence" for first degree murder is identical to a "life sentence" for robbery;

(c) contemporaneous convictions should be considered as aggravating circumstances;

(d) petitioner has a pending murder charge, a non-statutory aggravating circumstance;

(e) that petitioner caused a great risk of harm (leaving out the statutory requirement of "to many persons"), a statutory aggravating circumstance which does not apply;

(f) that the petitioner hindered a government function when there is no evidence to support such an aggravating circumstance; and

(g) that the offense was heinous, atrocious and cruel, also a statutory aggravating circumstance for which there was no evidence.

(5) Allowed, without objections, instructions to the jury

(a) which charged that consideration of mitigating circumstances "shall be limited to those enumerated in the statute;

(b) which failed to charge that the burden of proof upon the state, in its effort to show "aggravating circumstances", is "beyond a reasonable doubt", as earlier held by the Florida Supreme Court in Dixon v. State; and

(6) failed to protect petitioner from self-incriminating statements made to court-appointed psychiatrists, which statements were relied upon by the trial judge in imposition of sentence without affording petitioner the right of confrontation. See Estelle v. Smith, 101 S.Ct.1866 (198); and

(7) on the appeal of petitioner's conviction and sentence, counsel

(a) failed to preserve objection to every one of the substantial errors of law cited above except (B)(4)(b), and thereby waived appellate review, and

(b) allowed petitioner, a man of "borderline retarded" mental capacity, to testify without advice or presence of counsel at the trial of an accused co-felon, and there to incriminate himself under oath regarding the conviction on appeal as well as provide a substantial possibility of community inflammation and prejudice regarding a pending murder charge to be tried less than two months later in the same community.

IV.

THE COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER THE COURT BELOW ERRED IN REFUSING TO ORDER FUNDS WITH WHICH PETITIONER COULD SUBPOENA ESSENTIAL WITNESSES, TO DEPOSE TRIAL COUNSEL, AND TO PRODUCE DOCUMENTS ESSENTIAL TO A FAIR HEARING ON THE EFFECTIVENESS OF TRIAL COUNSEL.

Petitioner was denied funds with which he could have secured essential portions of the trial and sentencing transcripts of the accused co-felon, who received a life sentence, in order to provide a comparison of representation by another local attorney, in the co-felon's case, who (1) conducted a much more extensive voir dire examination, and (2) protected his client's rights and interests at trial and at sentencing, including a successful demand that the "beyond a reasonable doubt" instruction regarding proof of aggravating circumstances be given, and including his presentation of witnesses on his client's behalf at the sentencing stage of trial.

Petitioner also requested and was denied (1) funds for the use of expert witnesses to inform the court on the incidence of racially discriminatory attitudes in Perry, Florida, both historically and at the specific time of the crime and trial, and (2) the financial means to depose trial counsel in preparation for the evidentiary hearing.

CONCLUSION

Petitioner prays that the petition for writ of certiorari be granted.

Respectfully submitted,

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